patent term.

DEPARTMENT OF HEALTH & HUMAN SERVICES

Public Health Service

Food and Drug Administration
Rockville MD 20857

Re: Aqueous Aryl Fluorophosphite Suspension®
Docket No. 97E-0290

MAR - 3 1998

#40

Stephen G. Kunin
Deputy Assistant Commissioner for
Patent Policy and Projects
U.S. Patent and Trademark Office
Assistant Commissioner for Patents
Washington, D.C. 20231

Dear Mr. Kunin:

This is in regard to the application for patent term extension for U.S. Patent No.4,912,155 filed by Albermarle Corporation under 35 U.S.C. § 156. The food additive claimed by the patent is Aqueous Aryl Fluorophosphite Suspension®.

A review of the Food and Drug Administration's official records indicates that Aqueous Aryl Fluorophosphite Suspension® was subject to a regulatory review period before its commercial marketing or use, as required under 35 U.S.C. § 156(a)(4). Our records also indicate that it represents the first permitted commercial marketing or use of the product, as defined under 35 U.S.C. § 156(f)(1), and interpreted by the courts in Glaxo Operations UK Ltd. v. Quigg, 706 F. Supp. 1224 (E.D.Va. 1989), aff'd, 894 F.2d 392 (Fed. Cir. 1990).

The FAP was approved on January 15, 1997 which makes the submission of the patent term restoration application on March 14, 1997 timely within the meaning of 35 U.S.C. § 156(d)(1).

Should you conclude that the subject patent is eligible for patent term extension, please advise us accordingly. As required by 35 U.S.C. § 156(d)(2)(A), we will then determine the applicable regulatory review period, publish the determination in the Federal Register, and notify you of our determination.

Please let me know if we can be of further assistance.

Sincerely,

Ronald L. Wilson, Director
Health Assessment Policy Staff
Office of Health Affairs

cc: Teresa Stanek Rea
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